

Message Text

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16TH AF TORREJON AB SPAIN

UNCLAS SECTION 1 OF 2 MADRID 6840

E.O. 11652: N/A

TAGS: MARR SP

SUBJECT: RENEWED SPANISH EFFORTS TO TAX US MILITARY CARGOES

REF: MADRID 6749

1. SPANISH MINISTRY OF PUBLIC WORKS HAS RENEWED EFFORTS TO PRESSURE CONTAINER CARRIER AGENTS AND STEVEDORING CONTRACTOR OF US FORCES IN CADIZ AREA TO PAY GENERAL SERVICES TARIFF (G-3 TARIFF) ON CARGOES FOR US MILITARY FORCES ENTERING CADIZ.

2. ON NOVEMBER 8 CADIZ PORT AUTHORITY, (JOP) OF MINISTRY OF PUBLIC WORKS, PRESENTED LETTER TO US STEVEDORING CONTRACTOR (MAPOR) WHICH STATES AS FOLLOWS IN TRANSLATION:

"AFTER CONSULTATION WITH REFERENCE TO THE APPLICATION OF G-3 TARIFF TO CARGO DESTINED US FORCES IN SPAIN, THE GENERAL DIRECTORATE OF PORTS OF THE MINISTRY OF PUBLIC WORKS IN A LETTER DATED OCT 26, 1973, NOTIFIED THIS AUTHORITY THAT "AS PREVIOUSLY STATED IN VARIOUS OCCASIONS, THE ONLY EXEMPTIONS OR BONUSES CONSIDERED UNDER THE LAW OF FINANCIAL RULES FOR SPANISH PORTS ARE THOSE DEFINED IN ARTICLE 13 OF SAID LAW THAT EXPRESSLY PROHIBITS ANY

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EXEMPTIONS OR BONUSES OUTSIDE THOSE INDICATED THEREIN."

"IN THE SAME WAY WE WERE NOTIFIED THAT THIS JUNTA SHOULD TAKE THE NECESSARY STEPS IN ACCORDANCE WITH CURRENT LEGISLATION TO RESOLVE THE ANOMALOUS SITUATION THAT EXISTS IN THE DELAY IN PAYMENT AND LIQUIDATION OF MONIES DUE FROM APPLICATION OF AFOREMENTIONED G-3 TARIFF.

"WE COMMUNICATE THE FOREGOING TO YOU SO THAT YOU MAY NORMALIZE YOUR SITUATION OF DELINQUENCY PAYMENT OF SAID AMOUNTS AND IN AVOIDANCE OF THE INCONVENIENCES THAT YOU MAY ENCOUNTER AS A RESULT OF COLLECTION VIA JUDICIAL COMPULSION OR DISCONTINUANCE OF SERVICE. /(SIGNED) CHIEF ENGINEER OF THE PORT."

3. IDENTICAL NOTIFICATIONS HAVE BEEN RECEIVED BY US CONTAINER CARRIER AGENTS, AMERICAN EXPORT LINES, SEALAND SERVICE INCORPORATED, LYKES AND PRUDENTIAL. THE SEALAND REPRESENTATIVE HAS SOUGHT GUIDANCE FROM THE EMBASSY AS TO PRIVATE CONTRACTORS' POSITION ON PAYMENT OF TARIFF. LETTER TO 16TH AIR FORCE FROM GENERAL MANAGER OF MEDITERRANEAN OPERATING DIVISION OF SEALAND STATES:

(AMOUNT DUE)....."IS FOR THE ACCOUNT OF THE CARGO ON COMMERCIAL SHIPMENTS, AND, AS CARRIER WE ARE IN NO WAY INVOLVED. WE DO NOT FEEL, THEREFORE, THAT SEALAND SHOULD BE PUT IN A POSITION WHERE WE MUST ADVANCE LARGE SUMS OF MONEY IN BEHALF OF THE US GOVERNMENT, UNLESS WE ARE CERTAIN THAT WE CAN, IN TURN, COLLECT IT FROM THE GOVERNMENT. UNDER THE CIRCUMSTANCES, WE FEEL IT MORE APPROPRIATE THAT SUCH BILLS BE DIRECTED TO THE GOVERNMENT IN THE FIRST PLACE, OR ALTERNATIVELY, WE SHOULD HAVE A STATEMENT FROM THE GOVERNMENT THAT WE WILL BE REIMBURSED FOR ANY MONIES PAID OUT.

"IN THE EVENT IT IS FELT THAT NEGOTIATIONS WILL RESULT IN EXCLUDING GOVERNMENT CARGO FROM THE APPLICATION OF THIS TAX, YOU MAY WISH TO ADVISE US AGAINST THE PAYMENT OF THESE CHARGES. IN SUCH A CASE WE THINK IT IMPORTANT THAT YOU REQUEST THE SPANISH AUTHORITIES TO NOTIFY APPLICABLE PORT AUTHORITIES THAT OUR NON-PAYMENT OF INVOICES SUBMITTED TO US WILL NOT JEOPARDIZE OUR OPERATING POSITIONS IN PORTS, NOR WILL IT REFLECT ON OUR CREDIT POSITION IN A NEGATIVE MANNER. YOU WILL UNDERSTAND THAT WE DO NOT WANT TO BE PUT IN A POSITION WHERE NON-PAYMENT OF THIS TAX WOULD RESULT IN PENALTIES AGAINST OUR VESSELS OR OUR PEOPLE."

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4. WHEN PROBLEM LAST SURFACED IN MARCH 1971, US ASSERTED IN PERMANENT SECRETARIAT MEMO THAT LEVYING OF G-3 TARIFF WAS ILLEGAL UNDER TAX RELIEF ANNEX. GOS REPLIED IN MAY 1971 THAT LEGAL OFFICE OF MINISTRY OF FOREIGN AFFAIRS HAD CONCLUDED THAT "IT IS NOT POSSIBLE FOR DIRECTING AGENCIES OF SPANISH PORTS TO AVOID THE COLLECTION OF THE TARIFFS FOR SERVICES WHICH ARE ESTABLISHED BY THE LAW OF 1963 AS SOUGHT BY US

REPRESENTATIVES, SINCE IT IS A FEE NOT INCLUDED IN THE EXEMPTIONS AGREED UPON. THE EXEMPTION IS NOT ALLOWED BY THE LAW OF PORTS ITSELF, AND FURTHER THERE IS NO RULE AT THE SAME LEVEL THAT ESTABLISHES SUCH AS EXEMPTION AS THE ONE REQUESTED."

5. THERE HAS BEEN NO FURTHER OFFICIAL COMMUNICATION ON THIS QUESTION AT THE PERMANENT SECRETARIAT LEVEL SINCE 1971 AND ISSUE HAS BEEN SHELVED SINCE THAT TIME BECAUSE OF INFORMAL ESCROW AGREEMENT WORKED OUT AT THE LOWEST LEVEL AND DISCUSSED IN REFTTEL. ESCROW AGREEMENT HOWEVER IS AT BEST INFORMAL, INTERIM ARRANGEMENT WHICH, THOUGH DISCUSSED BETWEEN PORT OFFICIALS AND US CONTRACTORS IN CADIZ AND IN PERMANENT SECRETARIAT IN 1971, HAS NO EXPLICIT DOCUMENTARY BASIS.

6. TARIFF ISSUE WAS APPARENTLY REOPENED AT INITIATIVE OF MINISTRY OF PUBLIC WORKS, AT INSTIGATION OF MINISTRY OF FINANCE, RATHER THAN BY MINISTRY OF FOREIGN AFFAIRS. IT DOES NOT NOW APPEAR TO BE CALCULATED EFFORT TO FORCE NEGOTIATIONS ON NEW TAX RELIEF ANNEX. U.S. DIPLOMATIC SECRETARY OF PERMANENT SECRETARIAT ASKED SPANISH COUNTERPART ON NOV. 15 TO REQUEST MINISTRY OF PUBLIC WORKS TO DEFER ANY IMMEDIATE ACTION AGAINST US CONTRACTORS IN CADIZ AREA UNTIL US COULD CONSIDER PROBLEM AND POSSIBLY PRESENT ISSUE TO JOINT COMMITTEE. WHILE HE AVOIDED FIRM COMMITMENTS, SPANISH DIPLOMATIC SECRETARY SAID HE IS TRYING TO OBTAIN /STAY OF EXECUTION." FACED WITH THESE PRESSURES BOTH FROM PUBLIC WORKS MINISTRY AND FROM CONTRACTORS, WE CONSIDER BEST TACTIC IS TO PLAY FOR TIME BY SEEKING FULL JOINT COMMITTEE HEARING OF ENTIRE ISSUE, THOUGH ADMITTEDLY THERE IS SOME RISK THIS MAY LEAD TO REOPENING OF ENTIRE QUESTION OF NEGOTIATIONS OF TAX RELIEF ANNEX. THEREFORE, UNLESS DEPARTMENT HAS OVERRIDING OBJECTIONS, WE PLAN SUBMIT FOLLOWING MEMORANDUM THROUGH PERMANENT SECRETARIAT NO LATER THAN NOVEMBER 27.

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JUSMG MADRID SPAIN

16TH AF TORREJON AB SPAIN

UNCLAS SECTION 2 OF 2 MADRID 6840

BEGIN TEXT: THE US GOVERNMENT STEVEDORE CONTRACTOR FOR NON-CONTAINERIZED CARGO, MANIPULACION PORTUARIA DE CARGOS S.A. (MAPOR), AS WELL AS ALL MAJOR US FLAG CONTAINER CARRIERS' AGENTS (AMERICAN EXPORT LINES, LYKES, SEALAND, PRUDENTIAL LINES), HAVE RECEIVED IDENTICAL LETTERS FROM THE CADIZ PORT AUTHORITY (JOP) WARNING THAT PAYMENT OF OUTSTANDING G-3 TARIFF MUST BE MADE TO AVOID EITHER COLLECTION PROCEEDINGS THROUGH THE COURTS OR DISCONTINUANCE OF SERVICES IN THE COMMERCIAL PORT OF CADIZ.

AS POINTED OUT IN ITS PERMANENT SECRETARIAT MEMORANDUM NO. 80, DATED 24 MARCH 1971, THE UNITED STATES CONSIDERS THAT ITS MILITARY FORCES IN SPAIN ARE EXEMPT FROM THE DIRECT OR INDIRECT PAYMENT OF THE G-3 TARIFF BY VIRTUE OF PARAGRAPHS 1A, 1B AND 1C OF THE TAX RELIEF ANNEX OF THE MUTUAL DEFENSE ASSISTANCE AGREEMENT OF 1953. BEFORE FEBRUARY 1971 NO SUCH FEES WERE IMPOSED ON SHIPMENTS FOR US FORCES. APPARENTLY THE CHARGES ADOPTED AT THAT TIME REPLACED THE PREVIOUS "TARIFA MUELLE III" (PIERAGE TAX) WHICH WAS NEVER IMPOSED ON CARGO ON THE US FORCES SINCE THE INCEPTION OF SPANISH-US MILITARY COOPERATION IN 1953.

PARAGRAPH 1A OF THE TAX RELIEF ANNEX OF THE MUTUAL DEFENSE ASSISTANCE AGREEMENT OF 1953 PROVIDES IN PART, ".....THE UNCLASSIFIED

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ACTIVITIES AND EXPENDITURES CARRIED ON FOR THE COMMON DEFENSE UNDER THE TERMS OF THIS AGREEMENT OR OTHERWISE WILL BE EXEMPT FROM TAXATION (INCLUDING SURCHARGES, CONTRIBUTIONS, OR OTHER CHARGES OF ANY NATURE, OTHER THAN REASONABLE COMPENSATION WHICH MAY BE MADE BY THE UNITED STATES FOR SERVICES REQUESTED AND RECEIVED) BY OR FOR THE BENEFIT OF THE SPANISH GOVERNMENT, POLITICAL SUBDIVISIONS THEREOF, OR QUASI-GOVERNMENTAL ORGANIZATIONS."

PARAGRAPH 1B OF THE SAME ANNEX PROVIDES THAT THIS RELIEF

WILL APPLY IN ALL CASES IN WHICH THE US IS FINALLY SUBJECT TO THE PAYMENT OF THE TAX. THE US TAKES THE FOREGOING PROVISIONS INTO ACCOUNT IN CONSIDERING THE SPANISH GOVERNMENT ASSERTION THAT THE G-3 TARIFF IS A SERVICE CHARGE RATHER THAN A TAX. THE UNITED STATES GOVERNMENT LEASES PORT FACILITIES AT CADIZ USED BY THE UNITED STATES FORCES, INCLUDING OPEN STORAGE AND WAREHOUSE SPACE. THE UNITED STATES GOVERNMENT HAS PAID FOR ALL ADDITIONAL SERVICES REQUESTED AND RECEIVED. THE UNITED STATES TAKES THE POSITION THAT IT IS IMMATERIAL WHETHER THE CHARGE IS CHARACTERIZED AS A "TASA" OR "TARIFA" WHICH LATTER TERM IS THE ONE USED IN THE LAW ESTABLISHING THE G-3 TARIFF, SINCE IT IS A CHARGE, NOT FOR DIRECT SERVICES REQUESTED AND RECEIVED, BUT FOR INDIRECT SERVICES AND IS, THEREFORE, IN THE NATURE OF A TAX OR DUTY. THAT SUCH IS THE CASE WAS RECOGNIZED BY SPANISH OFFICIALS WHEN THE US WAS GRANTED AN EXEMPTION FROM THIS SAME CHARGE (FOR LOADING AND UNLOADING OF GOODS) UNDER ITS FORMER DESIGNATION, "TARIFA MUELLE III," IN ORDEN CIRCULAR OF THE MOP DATED 20 OCTOBER 1958.

FURTHER, ALTHOUGH THE LAW ESTABLISHING THE G-3 TARIFF DOES NOT SPECIFICALLY GRANT AN EXEMPTION TO ACTIVITIES OF THE US FORCES IN SPAIN, IT IS THE POSITION OF THE UNITED STATES THAT SUCH EXEMPTION IS GRANTED IN THE FISCAL PORTIONS OF THE 1953 AGREEMENTS, WHICH REMAIN IN EFFECT, AND THAT, IF NECESSARY UNDER THE INTERNAL LAW OF SPAIN, ACTION SHOULD BE TAKEN AT THE APPROPRIATE LEVEL OF GOVERNMENT TO RECOGNIZE AND IMPLEMENT THAT EXEMPTION, PURSUANT TO THE TERMS OF THE AGREEMENTS BETWEEN OUR COUNTRIES.

PENDING THE ULTIMATE RESOLUTION OF THE QUESTION OF THE UNITED STATES LIABILITY FOR THESE CONTESTED CHARGES, IT WAS AGREED IN 1971 THAT THE CHARGES NORMALLY PAYABLE WOULD BE PLACED BY MAPOR IN AN ESCROW ACCOUNT AT A SPANISH COMMERCIAL BANK IN THE CADIZ AREA. IT WAS FURTHER UNDERSTOOD

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THAT SAID FUNDS WOULD NOT BE RELEASED TO JOP OR RETURNED TO THE UNITED STATES GOVERNMENT UNTIL THIS MATTER WAS FINALLY RESOLVED. THE UNITED STATES GOVERNMENT HAS MADE PERIODIC PAYMENTS, THROUGH ITS CONTRACTOR, MAPOR, AND JOP HAS RECEIVED A BANK GUARANTEE FOR THE AMOUNTS DEPOSITED. DISCUSSIONS BETWEEN MAPOR AND JOP OFFICIALS IN 1971, AND FURTHER DISCUSSIONS IN THE PERMANENT SECRETARIAT IN 1971, CONFIRMED THAT THIS ARRANGEMENT WOULD CONTINUE UNTIL THIS MATTER WAS ULTIMATELY RESOLVED.

THE US SIDE IS THEREFORE UNDERSTANDABLY CONCERNED THAT JOP PROPOSES TO ABROGATE THIS UNDERSTANDING AND REQUESTS THAT BEFORE ANY UNILATERAL ACTION IS TAKEN THE MATTER BE GIVEN FULL CONSIDERATION BY THE JOINT COMMITTEE. IF US CONTRACTORS WERE REQUIRED TO DISCONTINUE SERVICES, AS JOP SUGGESTS, THE US MILITARY UNIT AT CADIZ AND THE CONTAINER CARRIERS WOULD BE UNABLE TO MOVE THE US-SPONSORED CARGO WITHIN THE PORT OF

CADIZ, RESULTING IN SERIOUS DISRUPTION TO US MILITARY
ACTIVITIES IN SPAIN. END TEXT.
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